

TITLE 13
NONCONFORMANCE

SUBTITLE 1. DEFINITIONS; OVERVIEW

§ 13-101. Definitions.

(a) *In general.*

In this title, the following terms have the meanings indicated.

(b) *Noncomplying structure.*

“Noncomplying structure” means any lawfully existing structure that does not comply with the applicable bulk regulations of the district in which it is located.

(c) *Nonconforming use.*

“Nonconforming use” means any lawfully existing use of a structure or of land that does not conform to the applicable use regulations of the district in which it is located.

§ 13-102. Purpose.

This article establishes separate districts, each of which is an appropriate area for the location of the uses and structures that are allowed in that district. Consistent with the establishment of those districts, all uses and structures incompatible with allowed uses and structures must be strictly regulated and properly controlled. This title, therefore, provides for the regulation of nonconforming uses and noncomplying structures existing in the various districts.

§ 13-103. Scope.

(a) *In general.*

Except as specified in subsection (b) of this section, this title regulates the continuance of all:

- (1) nonconforming uses;
- (2) nonconforming structures and their uses; and
- (3) noncomplying structures.

(b) *Nonconforming signs.*

The continuance of nonconforming signs are regulated by Title 11 {“Sign Regulations”} of this article.

§ 13-104. Termination of certain uses.

(a) *Imposed on certain uses.*

Nonconforming uses and noncomplying structures substantially and adversely affect the maintenance, development, use, and taxable value of other property in the district. Accordingly, for those uses that have serious blighting effects on adjacent uses, a time limit, or tolerance period, has been placed on their continuance.

(b) *Benefits.*

In those cases, the owner is given time within which to make alternative plans for the property, while the public is assured that the district in which the nonconforming use exists will eventually benefit from a substantial uniformity of uses within the district.

(c) *Terminations required by prior ordinances to govern.*

Notwithstanding any other provisions of this title, if any use is required to be terminated under this article and was also required to be terminated or made conforming under any prior ordinance of the Mayor and City Council, the prior ordinance governs as to the date of the required termination.

§ 13-105. Nonconformity not established by casual, temporary, or unlawful uses.

A casual, temporary, or unlawful use of any land or structure does not establish any nonconforming use, noncomplying density, or other form of nonconformity.

§ 13-106. Noncompliance with off-street parking requirements.

No use may be construed as nonconforming solely by reason of noncompliance with the off-street parking requirements of this article.

§ 13-107. Determinations of nonconformity or noncompliance.

(a) *By Board.*

Whether a nonconforming use, noncomplying density, or other form of nonconformity exists is a question of fact that, except as specified in subsection (b) of this section, must be decided by the Board after public notice and hearing and in accordance with the rules of the Board.

(b) *By Administrator.*

The Zoning Administrator may issue a use permit, without referring the matter to the Board, if:

- (1) permits, ordinances, the Police Survey of 1931, or other records on file with the Zoning Administrator:
 - (i) document the existence of a bona fide nonconforming use, noncomplying density, or other nonconformance; and
 - (ii) clearly show its continued and uninterrupted use to the date of inquiry or application; and

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- (2) a field inspection of the construction, design, and arrangement of the structure or use in question confirms these records.

SUBTITLE 2. NONCONFORMING USES OF LAND (CLASS I)

§ 13-201. Scope of subtitle.

This subtitle applies to Class I nonconforming uses, which comprise:

- (1) any nonconforming use of land on which no structure is located;
- (2) any nonconforming use of land on which the use of a structure is accessory to the nonconforming use; and
- (3) any nonconforming use of land on a part of which a structure is located and the nonconforming use of the land is not accessory to any use of the structure.

§ 13-202. Continuation of use.

Except as specified in this article, Class I nonconforming uses of land may be continued, subject to the regulations of this subtitle.

§§ 13-203 to 13-204. *{Reserved}*

§ 13-205. Changes in use.

- (a) *Only to permitted use.*

A Class I nonconforming use may not be changed to any other use except a use that is permitted in the district in which the land is located.

- (b) *Reversion prohibited.*

If a Class I nonconforming use has been changed to a conforming use, it may not later be changed back to a nonconforming use.

§ 13-206. Expansions of use.

- (a) *In general.*

Except as specified in subsection (b) of this section, a Class I nonconforming use in any district may not be expanded in any manner, nor may any structure be erected or expanded, unless the use of the land and the structure is made to conform to the regulations of the district in which they are located.

- (b) *In B-3, B-4, B-5, M-2, and M-3 Districts.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize an expansion of a Class I nonconforming use in a B-3, B-4, B-5, M-2, or M-3 District.

§ 13-207. Discontinuance or abandonment.

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(a) *Discontinuance of use.*

Whenever the active and continuous operation of any Class I nonconforming use, or any part of that use, has been discontinued for 6 consecutive months:

- (1) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use, regardless of any reservation of an intent to resume active operations or otherwise not abandon the use; and
- (2) the discontinued nonconforming use, or discontinued part of that use:
 - (i) may not be reestablished; and
 - (ii) any subsequent use of any part of the land or structure previously used for the discontinued use, or discontinued part of that use, must conform to the regulations of the district in which the land or structure is located.

(b) *Abandonment of use.*

If, at any time, actual abandonment in fact is evidenced by removal of structures, machinery, or equipment, or by alterations that indicate a change in the use of any part of the land or structure:

- (1) that action constitutes an abandonment of the nonconforming use, or affected part of that use; and
- (2) all rights to continue or reestablish the nonconforming use, or part of that use, immediately terminate.

§ 13-208. Relocation within lot.

(a) *In general.*

Except as specified in subsection (b) of this section, a Class I nonconforming use in any district may not be moved, in whole or in part, to any other location on the lot.

(b) *In B-3, B-4, B-5, M-2, and M-3 Districts.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize a Class I nonconforming use in a B-3, B-4, B-5, M-2, or M-3 District to be moved to another location on the lot.

§ 13-209. Mandatory termination in Residence, Office-Residence, and B-1 Districts

In a Residence, Office-Residence, or B-1 District, a Class I nonconforming use must be discontinued and cease no later than 3 years after the date on which that use became nonconforming, whether the use became nonconforming by the enactment of or amendment to this article or by reclassification of a district or property.

SUBTITLE 3. NONCONFORMING STRUCTURES AND THEIR USES (CLASS II).

§ 13-301. Scope of subtitle.

This subtitle applies to Class II nonconforming structures and their uses, which comprise:

- (1) any structure all or substantially all of which was designed and erected for a use that is no longer allowed in the district in which it is located; and
- (2) any nonconforming uses of that structure or of the lot on which that structure is located.

§ 13-302. Continuation of structure and use.

Except as specified in this article, Class II nonconforming structures and their uses may be continued, subject to the regulations of this subtitle.

§ 13-303. Repairs and alterations.

(a) *In general.*

A Class II nonconforming structure may be maintained, repaired, or structurally altered subject to the conditions of this section.

(b) *Conditions of making repairs, etc.*

- (1) In a Business District (other than B-1) or Industrial District, all alterations that create expansions must comply with § 13-306 of this subtitle.
- (2) In a Residence, Office-Residence, or B-1 District:
 - (i) the nonconforming use may not be expanded; and
 - (ii) no structural alterations may made in or to any part of the structure, except:
 - (A) those required by law;
 - (B) those made to conform the structure and its use to the regulations of the district in which the structure is located; or
 - (C) the alteration of an exterior wall, if authorized by the Board under Subtitle 7 {“Modifications and Continuances by Board”} of this title.

(c) *Permitted repairs.*

The repairs permitted by this section include:

- (1) the replacement of storage tanks where the safety of operations in the structure requires this replacement;
- (2) other replacements or substitutions of machinery or equipment that do not involve

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structural alterations to any part of the structure; and

(3) the replacement of damaged or deteriorated structural members.

§ 13-304. Restoration of damaged structures.

If any part of a Class II nonconforming structure is destroyed or damaged by fire, other casualty, or act of God, no repairs or reconstruction may be made unless:

(1) a building permit is obtained and work started within 1 year from the date of the destruction or damage and the work is diligently pursued to completion; or

(2) the repairs or reconstruction are:

(i) required by law; or

(ii) made to conform the structure to the regulations of the district in which the structure is located.

§ 13-305. Changes in use.

(a) *In general.*

Except as specified in subsection (b) or (c) of this section, a Class II nonconforming use in any district may not be changed to any other nonconforming use.

(b) *In Residence and Office-Residence Districts.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize a Class II nonconforming use in a Residence or Office-Residence District to be changed as follows:

(1) to a use permitted in an M-1 District, if the nonconforming use is located in a structure all or substantially all of which is designed and erected for an industrial use; or

(2) to a use permitted in a B-1 District, if the nonconforming use is located in a structure all or substantially all of which is designed and erected for a business or other nonconforming use.

(c) *In Business and Industrial Districts.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize a Class II nonconforming use in a Business or Industrial District to be changed to another nonconforming use that is similar in nature and character to the existing nonconforming use.

(d) *Reversion prohibited.*

If a Class II nonconforming use has been changed to a conforming use, it may not later be changed back to a nonconforming use.

§ 13-306. Expansions of use.

A Class II nonconforming structure and the uses of that structure may not be expanded in any manner, nor may any structure be erected or expanded on any nonconforming use of land, unless:

- (1) the use of the structure and land is made to conform to the regulations of the district in which the structure is located; or
- (2) the expansion is authorized by the Board under Subtitle 7 {“Modifications and Continuances by Board”} of this title.

§ 13-307. Discontinuance or abandonment.

(a) *Discontinuance of use.*

- (1) Except as specified in paragraph (2) of this subsection, whenever the active and continuous operation of any Class II nonconforming use, or any part of that use, has been discontinued for 18 consecutive months:
 - (i) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use, regardless of any reservation of an intent to resume active operations or otherwise not abandon the use; and
 - (ii) the discontinued nonconforming use, or discontinued part of that use:
 - (A) may not be reestablished; and
 - (B) any subsequent use of any part of the land or structure previously used for the discontinued use, or discontinued part of that use, must conform to the regulations of the district in which the land or structure is located.
- (2) In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may extend the time limit for discontinuance for 1 or more additional periods. In no case, however, may the total of the additional time exceed 18 months.

(b) *Abandonment of use.*

If, at any time, actual abandonment in fact is evidenced by removal of structures, machinery, or equipment, or by alterations that indicate a change in the use of any part of the land or structure:

- (1) that action constitutes an abandonment of the nonconforming use, or affected part of that use; and
- (2) all rights to continue or reestablish the nonconforming use, or part of that use, immediately terminate.

§ 13-308. Relocation within lot.

(a) *In general.*

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Except as specified in subsection (b) of this section, a Class II nonconforming structure or use in any district may not be moved, in whole or in part, to any other location on the lot, unless the structure, or the moved part of the structure, and the use are made to conform to the regulations of the district in which the structure is located.

(b) *In B-2 to B-5, M-2, and M-3 Districts.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize a Class II nonconforming structure in a B-2, B-3, B-4, B-5, M-2, or M-3 District to be moved another location on the lot.

SUBTITLE 4. NONCONFORMING USES OF STRUCTURES (CLASS III)

§ 13-401. Scope of subtitle.

This subtitle applies to Class III nonconforming uses, which comprise:

- (1) any nonconforming use of all or part of a structure that was designed and erected primarily for a use that is no longer allowed in the district in which it is located;
- (2) any nonconforming use of the lot on which that structure is located; and
- (3) any nonconforming use of land or structures not regulated as Class I or Class II.

§ 13-402. Continuation of use.

Except as specified in this article, Class III nonconforming uses of structures may be continued, subject to the regulations of this subtitle.

§ 13-403. Repairs and alterations.

(a) *In general.*

A structure or part of a structure devoted to a Class III nonconforming use may be maintained, repaired, or structurally altered subject to the conditions of this section.

(b) *Conditions of making repairs, etc.*

- (1) In a Business District (other than B-1) or Industrial District (other than M-1), all alterations that create expansions must comply with § 13-406 {“Expansions of use”} of this subtitle.
- (2) In a Residence, Office-Residence, B-1, or M-1 District:
 - (i) the nonconforming use may not be expanded; and
 - (ii) no structural alterations may made in or to any part of the structure, except:
 - (A) those required by law;
 - (B) those made to conform the structure and its use to the regulations of the district in which the structure is located; or
 - (C) the alteration of an exterior wall, if authorized by the Board under Subtitle 7 {“Modifications and Continuances by Board”} of this title.

(c) *Permitted repairs.*

The repairs permitted by this section include:

- (1) the replacement of storage tanks where the safety of operations in the structure requires

this replacement;

- (2) other replacements or substitutions of machinery or equipment that do not involve structural alterations to any part of the structure; and
- (3) the replacement of damaged or deteriorated structural members.

§ 13-404. Restoration of damaged structures.

If any part of a structure devoted to a Class III nonconforming use is destroyed or damaged by fire, other casualty, or act of God, no repairs or reconstruction may be made unless:

- (1) a building permit is obtained and work started within 1 year from the date of the destruction or damage and the work is diligently pursued to completion; or
- (2) the repairs or reconstruction are:
 - (i) required by law; or
 - (ii) made to conform the structure and use to the regulations of the district in which the structure is located.

§ 13-405. Changes in use.

(a) *In general.*

Except as specified in subsection (b) or (c) of this section, a Class III nonconforming use in any district may not be changed to any other nonconforming use.

(b) *In Residence and Office-Residence Districts.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize a Class III nonconforming use in a Residence or Office-Residence District to be changed to a use permitted in a B-1 District.

(c) *In B-1 and M-1 Districts.*

A Class III nonconforming use in a B-1 or M-1 District may only be changed to a use that is permitted in the district in which the nonconforming use is located.

(d) *B-2 to B-5, M-2, and M-3 Districts.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize a Class III nonconforming use in a B-2, B-3, B-4, B-5, M-2, or M-3 District to be changed to another nonconforming use that is similar in nature and character to the existing nonconforming use.

(e) *Reversion prohibited.*

If a Class III nonconforming use has been changed to a conforming use, it may not later be changed back to a nonconforming use.

§ 13-406. Expansions of use.

Except as authorized by the Board under Subtitle 7 {“Modifications and Continuances by Board”} of this title, a Class III nonconforming use may not be expanded in any manner, nor may any structure be erected or expanded on any nonconforming use of land, unless the use of the land and structure is made to conform to the regulations of the district in which the structure is located.

§ 13-407. Discontinuance or abandonment.

(a) Discontinuance of use.

(1) Except as specified in this section, whenever the active and continuous operation of any Class III nonconforming use, or any part of that use, has been discontinued for 12 consecutive months:

(i) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use, regardless of any reservation of an intent to resume active operations or otherwise not abandon the use; and

(ii) the discontinued nonconforming use, or discontinued part of that use:

(A) may not be reestablished; and

(B) any subsequent use of any part of the land or structure previously used for the discontinued use, or discontinued part of that use, must conform to the regulations of the district in which the land or structure is located.

(2) In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may extend the time limit for discontinuance for 1 or more additional periods. In no case, however, may the total of the additional time exceed 12 months.

(b) Abandonment of use.

Except as specified in this section, if, at any time, actual abandonment in fact is evidenced by removal of structures, machinery, or equipment, or by alterations that indicate a change in the use of any part of the land or structure:

(1) that action constitutes an abandonment of the nonconforming use, or affected part of that use; and

(2) all rights to continue or reestablish the nonconforming use, or part of that use, immediately terminate.

(c) Exceptions for R-6 to R-10 Districts.

This section does not apply to any Class III nonconforming uses in an R-6, R-7, R-8, R-9, or

R-10 District.

§ 13-408. Relocation within lot or structure.

(a) *In general.*

Except as specified in subsection (b) of this section, a Class III non-conforming use in any district may not be moved, in whole or in part, to any other location on the lot or any other part of the structure.

(b) *In B-2 to B-5, M-2, and M-3 Districts.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize a Class III nonconforming use in a B-2, B-3, B-4, B-5, M-2, or M-3 District to be moved to another location on the lot or another part of the structure.

SUBTITLE 5. NONCOMPLYING STRUCTURES

PART I. NONCOMPLIANCE GENERALLY

§ 13-501. Scope of subtitle.

- (a) *Subtitle limited to noncompliance with bulk regulations.*

This subtitle regulates only lawfully existing structures that do not comply with the bulk regulations of the districts in which they are located.

- (b) *Noncomplying structures devoted to nonconforming use.*

- (1) If a structure is both noncomplying and is devoted in whole or in part to a nonconforming use, the structure is subject to both:

- (i) the provisions of this title that govern nonconforming uses; and
- (ii) the provisions of this subtitle.

- (2) In the event of any conflict or inconsistency between the provisions that govern nonconforming uses and the provisions of this subtitle, the provisions that govern nonconforming uses control.

§13-502. Continuation of structure.

Except as specified in this article, noncomplying structures may be continued, subject to the requirements of this subtitle.

§ 13-503. Repairs and alterations.

A noncomplying structure may be maintained, repaired, or structurally altered, as long as all alterations that create expansions comply with § 13-506 {“Expansion of Structure”} of this subtitle.

§ 13-504. Restoration of damaged structures.

If any part of a noncomplying structure is destroyed or damaged by fire, other casualty, or act of God, the structure or damaged part may not be repaired or reconstructed unless a building permit is obtained and work started within 1 year from the date of the destruction or damage and the work is diligently pursued to completion.

§ 13-505. {Reserved}

§ 13-506. Expansions of structure.

A noncomplying structure may not be expanded if the expansion would either:

- (1) create a new noncompliance; or
- (2) increase the degree of noncompliance of any part of the structure.

§ 13-507. {Reserved}

§ 13-508. Relocation within lot.

A noncomplying structure may not be moved, in whole or in part, to any other location on the lot, unless the structure or the moved part of the structure, is made to comply with the bulk regulations of the district in which the structure is located.

§§ 13-509 to 13-510. {Reserved}

PART II. NONCOMPLIANCE BY MULTIPLE-FAMILY STRUCTURES

§ 13-511. Scope of part.

(a) *In general.*

Except as specified in subsection (b) of this section, this Part II applies to any structure that:

- (1) at any time, with or without Board authorization, has been converted for 4 or more dwelling units or, if originally built for 4 or more dwelling units, has been converted to increase the number of dwelling units; and
- (2) now fails to comply with the minimum lot area requirements of the district in which it is located.

(b) *Structure previously erected lawfully.*

This Part II does not apply to any noncomplying structure that:

- (1) in compliance with or before the enactment of this article, as evidenced by permits or records of the City, was originally designed and built as a multiple-family dwelling structure for 4 or more dwelling units; and
- (2) has not been altered, added to, or subdivided in any manner that increases the number of dwelling units to more than the maximum now allowed under this article.

§ 13-512. Discontinuance or abandonment.

(a) *Discontinuance.*

Whenever the active and continuous use of a dwelling unit in a non-complying multiple-family structure subject to this Part II has been discontinued for 12 consecutive months:

- (1) the discontinuance constitutes an abandonment of that dwelling unit, regardless of any reservation of an intent to resume active use of or to reoccupy the unit or otherwise not to abandon it; and
- (2) the number of dwelling units allowed to continue in the structure is reduced by 1.

(b) *Abandonment.*

If, at any time, actual abandonment in fact is evidenced by removal of plumbing or kitchen facilities, by alterations that indicate an abandonment of any noncomplying dwelling unit, including consolidation with another dwelling unit, or by the issuance of a use permit for fewer dwelling units:

- (1) that action constitutes an abandonment of the dwelling unit;
- (2) all rights to continue or reestablish the previous number of dwelling units immediately terminate; and
- (3) the number of dwelling units allowed to continue in the structure is reduced by 1.

§ 13-513. Mandatory termination in R-8 to R-10 Districts.

(a) *In general.*

Except as specified in subsection (b) of this section, if a noncomplying multiple-family structure subject to this Part II is located in an R-8, R-9, or R-10 District, the number of dwelling units in that structure must be reduced to comply with the requirements of the district in which it is located no later than 8 years after the date on which that structure became noncomplying, whether by the enactment of or amendment to this article or by reclassification of a district or property.

(b) *Conditional continuance.*

In accordance with Subtitle 7 {“Modifications and Continuances by Board”} of this title, the Board may authorize the continuance of 1 or more noncomplying dwelling units in the noncomplying multiple-family structure.

SUBTITLE 6. NONCONFORMING STATUS OF CERTAIN USES

PART I. CONTINUATION AND REGULATION OF CERTAIN USES

§ 13-601. Parking structures in Residence and Office-Residence Districts.

(a) In general.

Notwithstanding any other provision of this title, in a Residence or Office-Residence District, if all or substantially all of a structure is designed for the storage or parking of privately owned automobiles:

- (1) the structure may be continued for that use;
- (2) the use does not have the status of a nonconforming use; and
- (3) the use may not be changed to any nonconforming use.

(b) Structures devoted to nonconforming use.

(1) In general.

If all or any part of the structure is devoted to a use other than the storage or parking of privately owned automobiles, and that other use is nonconforming, the nonconforming use may be continued, subject to the provisions of this section.

(2) No alterations.

Except as required by law, no part of the structure may be altered in internal arrangement and no structural alterations may be made in or to the structure for any use other than the storage or parking of privately owned automobiles.

(3) No change in use.

The nonconforming use may not be changed to any other use than the storage or parking of privately owned automobiles.

(4) No expansions.

The nonconforming use may not be expanded in any manner.

(5) Discontinuance.

Whenever the active and continuous operation of the nonconforming use, or any part of that use, has been discontinued for 6 consecutive months:

- (i) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use, regardless of any reservation of an intent to resume active operations or otherwise not to abandon the use; and

(ii) the discontinued nonconforming use, or discontinued part of that use:

(A) may not be reestablished; and

(B) no other use may be established in the structure other than the storage or parking of privately owned automobiles.

(6) *Abandonment.*

If, at any time, actual abandonment in fact is evidenced by removal of structures, machinery, or equipment, or by alterations that indicate a change in the use of any part of the structure:

(i) that action constitutes an abandonment of the nonconforming use, or affected part of that use; and

(ii) all rights to continue or reestablish the nonconforming use, or part of that use, immediately terminate.

(7) *No relocation.*

No part of the structure or the nonconforming use may be moved to any other location on the lot.

(8) *Mandatory termination.*

The nonconforming use must be discontinued and cease no later than 3 years after the date on which that use became nonconforming, whether the use became nonconforming by the enactment of or amendment to this article or by reclassification of a district or property, and the structure may then be used only for the storage or parking of privately owned automobiles.

(c) *Accessory use allowed.*

This section does not prevent the accessory use of the structure to a building on the same lot, as permitted under this article.

§ 13-602. Expansions of certain attached dwellings.

Nothing in this title prohibits an expansion or reconstruction of an existing attached dwelling if:

(1) the attached dwelling is nonconforming only because it exceeds the maximum number permitted in a row or group; and

(2) all applicable bulk regulations of the district in which the dwelling is located are met.

§ 13-603. {Reserved}

§ 13-604. Dwellings in Industrial Districts.

Notwithstanding § 13-304 {"Restoration of damaged structures"} and § 13-307 {"Discontinuance or abandonment"} of this title, if all or substantially all of a structure in an Industrial District is designed for dwelling use and if the structure contains a nonconforming dwelling use, the structure may be continued for that nonconforming dwelling use.

§ 13-605. {Reserved}

§ 13-606. Restaurant or tavern with live entertainment in B-2 District.

Notwithstanding the provisions of this title, any lawfully established restaurant or tavern that is in a B-2 District and, on April 20, 1971, was operating with live entertainment or dancing as an accessory use:

- (1) may be continued; and
- (2) does not have the status of a nonconforming use.

§ 13-607. Conversion of certain taverns to package goods stores.

(a) *In general.*

The Zoning Administrator must issue a new use permit as a nonconforming package goods liquor store for any nonconforming tavern that:

- (1) as of December 31, 1995, was operating principally as a package goods store under a Class B-D-7 beer, wine and liquor license;
- (2) within the time specified by State law, renews its Class B-D-7 license as a Class A-2 beer, wine and liquor off-sale package goods license; and
- (3) within 60 days of July 11, 1996, submits a completed application for the new use permit to the Zoning Administrator.

(b) *Expansions prohibited.*

Notwithstanding any other provision of this article, the nonconforming use conducted under the new use permit may not be expanded in any manner, nor may the Board, by variance or otherwise, authorize any expansion beyond that which lawfully existed on December 31, 1995.

§ 13-608. {Reserved}

§ 13-609. Adult-entertainment businesses.

Any adult-entertainment business existing on September 10, 1993, is considered a nonconforming use, subject to all Class III regulations.

§ 13-610. Amusement devices.

(a) *In general.*

Notwithstanding any provision of this title, nonconforming amusement devices are not allowed except as specified in this section.

(b) *In certain establishments.*

No more than 5 licensed amusement devices are allowed when used in combination with one of the following:

- (1) Billiard or pool room.
- (2) Bowling alley.
- (3) Bus, train, or boat terminal.
- (4) Hotel or motel.
- (5) Indoor tennis or racquet club.
- (6) Marina.
- (7) Miniature golf.
- (8) Race track.
- (9) Restaurant with alcoholic beverage license.
- (10) Skating rink.
- (11) Social, fraternal, or veteran club.
- (12) Swimming pool.
- (13) Tavern.

(c) *With other entertainment, etc., uses.*

No more than 5 amusement devices are allowed when used in combination with other uses that the Board finds, after a public hearing, to be entertainment, leisure, or recreation oriented.

(d) *With non-entertainment, etc., uses.*

No amusement devices are allowed when used in combination with uses that are not entertainment, leisure, or recreation oriented, unless:

- (1) an amusement device location permit is obtained under Article 15 of the City Code; and
- (2) based on the net floor area of the location's interior space devoted to the principal use:

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- (i) no more than 1 device is used for a location with a net floor area of 600 square feet or less; and
- (ii) no more than 2 devices are used for a location with a net floor area that exceeds 600 square feet.

§§ 13-611 to 13-614. {Reserved}

PART II. MANDATORY TERMINATION OF CERTAIN USES

§ 13-615. Check cashing, etc., in Residence and Office-Residence Districts.

Check cashing, money changing, and similar types of agencies operated primarily for the cashing of checks or changing of money located in a Residence or Office-Residence District must be discontinued and cease no later than 3 years after the date on which that use became nonconforming, whether the use became nonconforming by the enactment of or amendment to this article or by reclassification of a district or property.

§ 13-616. Massage salons in Residence, Office-Residence, and B-1 to B-3 Districts.

Massage salons in a Residence, Office-Residence, B-1, B-2, or B-3 District must be discontinued and cease no later than 18 months after the date on which that use became nonconforming, whether the use became nonconforming by the enactment of or amendment to this article or by reclassification of a district or property.

§ 13-617. {Reserved}

§ 13-618. After-hours establishments in Residence, Office-Residence, B-1, and B-2 Districts.

After-hours establishments, other than private clubs, located in a Residence, Office-Residence, B-1, or B-2 District must be discontinued and cease no later than 18 months after the date on which that use became nonconforming, whether the use became nonconforming by the enactment of or amendment to this article or by reclassification of a district or property.

§ 13-619. Tire storage near Residence District.

Where the open storage of tires or tire products in an M-2 District exists as a principal or accessory use and is within 200 feet of a Residence District, that use must be discontinued and cease within 12 months after the date on which that use became nonconforming, whether the use became nonconforming by the enactment of or amendment to this article or by reclassification of a district or property, unless approved as a conditional use under § 7-307 {"Conditional uses — Board approval required"} of this article.

§§ 13-620 to 13-622. {Reserved}

§ 13-623. Amusement arcades near church or school in B-3 or B-5 District.

Amusement arcades in a B-3 or B-5 District that are located within 500 feet of the boundary line of a church or school must be discontinued and cease no later than July 1, 1985.

SUBTITLE 7. MODIFICATIONS AND CONTINUANCES BY BOARD

PART I. GENERAL PROVISIONS

§ 13-701. “Modify” defined.

In this subtitle, “modify” means to expand, change, alter, or move.

§ 13-702. Board authority.

Subject to the provisions of this subtitle, the Board may authorize:

- (1) modifications of nonconforming uses and structures; and
- (2) the continuance of nonconforming uses and of noncomplying dwelling units in noncomplying structures.

§ 13-703. Limitations.

(a) *Specific instances.*

The Board’s authority extends under § 13-702 {“Board authority”} of this subtitle only to the specific instances set forth in this subtitle.

(b) *Basic standards.*

The Board may authorize modifications and continuances only where, after public notice, posting, and hearing, the Board:

- (1) makes findings of fact in accordance with the guides, standards, and limitations prescribed in this subtitle; and
- (2) finds that the authorization:
 - (i) is not contrary to the public interest; and
 - (ii) is in harmony with the purposes and intent of this article.

§ 13-704. Applications.

An application for any modification or continuance under this subtitle must be filed with the Zoning Administrator in the form that the Zoning Administrator requires. The application must be accompanied by the plans and information that the Board requires by general rule.

§§ 13-705 to 13-706. {Reserved}

PART II. MODIFICATIONS

§ 13-707. In general.

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The Board may authorize modifications of nonconforming uses and structures as specified in this Part II.

§ 13-708. General considerations.

In addition to the guides, standards, and limitations prescribed for the specific instances to which this Part II applies, the Board must consider in each instance:

- (1) the general character of uses and structures within at least 300 feet in all directions from the lot lines of the property under consideration;
- (2) the site plan, arrangement, design, and architectural features of all existing and proposed structures in the surrounding neighborhood;
- (3) the type, nature of illumination, and design of any signs;
- (4) the amount of noise, traffic, and any other deleterious external effect that the nonconforming use can reasonably be anticipated to generate or create;
- (5) the nature of any protective screening or other safeguard designed to shield the neighborhood from any adverse effect; and
- (6) the amount and nature of off-street parking and loading facilities available or to be provided in conjunction with the proposed use.

§ 13-709. Imposition of conditions.

(a) *Board may impose.*

To the extent necessary or desirable to reduce or minimize any effect of a proposed modification on other properties in the neighborhood, the Board may:

- (1) require changes in any design or plan of any existing structure or any alteration of the structure; and
- (2) impose conditions, restrictions, and limitations governing:
 - (i) screening or fencing;
 - (ii) type of lighting;
 - (iii) nature of any sign;
 - (iv) circulation of vehicles and pedestrians;
 - (v) parking;
 - (vi) hours of operation; and

(vii) any other matter.

(b) *Compliance required.*

- (1) Failure to comply with any change, condition, restriction, or limitation imposed by the Board under this section constitutes a violation of this article.
- (2) No condition, restriction, or limitation imposed by the Board under this section may be changed unless, on the filing of a new application to the Board, the Board authorizes that change.

§§ 13-710 to 13-711. *{Reserved}*

§ 13-712. Change of certain Class II or III nonconforming uses.

The Board may authorize a change of a Class II or Class III nonconforming use, as limited and stated in §§ 13-305 and 13-405 {"Changes in use"} of this title, if the Board finds that:

- (1) any emission of noise, vibration, smoke or particulate matter, toxic matter, odorous matter, or glare from the proposed use would be no greater than that from the existing or last use of the property;
- (2) the proposed use will not generate a greater volume of traffic than the existing or last use of the property;
- (3) the proposed use will not occupy a greater portion of the lot or structure than the existing or last use of the property; and
- (4) the effect of the proposed use on the health, safety, or general welfare of the community will be no worse than the existing or last use of the property.

§ 13-713. Alteration of exterior walls of Class II or III nonconforming use.

The Board may authorize an alteration of the exterior wall of a Class II or Class III nonconforming use, as stated in §§ 13-303 and 13-403 {"Repairs and alterations"} of this title, if the Board finds that:

- (1) the nonconforming use lawfully adjoins that wall;
- (2) the alteration will not extend beyond that part of the building actually occupied by the nonconforming use;
- (3) the alteration will not include the enlargement of any display window; and
- (4) the alteration:
 - (i) will result in greater architectural harmony with adjacent buildings in the district in which the nonconforming use is located; and

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- (ii) will result in a facade that, as compared to the previous design and treatment of the building wall, is more in keeping with uses permitted in the district.

§ 13-714. Extension or moving of Class I, II, or III nonconforming use.

The Board may authorize an extension or moving of a Class I, Class II, or Class III nonconforming use, as limited and stated in §§ 13-206, 13-306, and 13-406 {"Expansions of use"} and §§ 13-208, 13-308, and 13-408 {"Relocations"} of this title, if the Board finds that:

- (1) the extension or moving will not cause a greater volume of traffic than that generated before the extension or move;
- (2) the extension or moving will not violate in any manner the bulk regulations of the district in which the property is located;
- (3) the effect of the extended or moved use on the health, safety, or general welfare of the community will be no worse than the existing or last use;
- (4) for the extension of a Class II or Class III nonconforming use, the extension will not result in an increase of the floor area of more than 25% beyond that which had been occupied or used when it became nonconforming; and
- (5) for an extension in the Critical Area:
 - (i) there is no environmentally acceptable alternative outside the Critical Area; and
 - (ii) the use is needed to correct an existing water quality or wastewater management problem.

§§ 13-715 to 13-716. {Reserved}

PART III. CONTINUANCES

§ 13-717. In general.

The Board may authorize the continuance of nonconforming uses and of noncomplying dwelling units in noncomplying structures as specified in this Part III.

§ 13-718. Continuances for Class II or III nonconforming use.

(a) Board authority.

The Board may extend the time limit for the discontinuance of a Class II or a Class III nonconforming use, subject to the limits stated in §§ 13-307 and 13-407 {"Discontinuance or abandonment"} of this title, as specified in this section.

(b) Timely application required.

To obtain an extension, the property owner must apply to the Board, in writing, before or within 6 months after the specified discontinuance period lapses.

(c) *General considerations.*

- (1) In addition to the findings required by subsection (d) of this section, the Board must give due regard to the age and condition of the structure and the practicability of its adaption or conversion to a conforming use.
- (2) Any relief granted by the Board:
 - (i) may only be as reasonably required to effect substantial justice;
 - (ii) may not be granted on an arbitrary or discriminatory basis; and
 - (iii) must be granted with due consideration for its effect on the value, utilization, enjoyment, and ultimate development of neighborhood properties.

(d) *Required findings.*

The Board must find that:

- (1) the nonconforming use has not in fact been abandoned;
- (2) discontinuance of the use has been beyond the control of the owner;
- (3) the owner has made all reasonable efforts to rent, lease, sell, or continue the use of the property; and
- (4) the enforcement of the time limit would impose on the owner or lessee of the property exceptional and practical difficulties that are not:
 - (i) created by or the result of any action or lack of action by any person having an interest in the property; or
 - (ii) the result of disregard for or ignorance of the provisions of this title.

§ 13-719. Continuances for noncomplying dwelling units in R-8, R-9, and R-10 Districts.

(a) *Board authority.*

The Board may authorize the continuance of a noncomplying dwelling unit in a noncomplying structure located in an R-8, R-9, or R-10 District, as stated in § 13-513 {“Mandatory termination in R-8 to R-10 Districts”} of this title.

(b) *Timely application required.*

To obtain an extension, the property owner must apply to the Board, in writing, at least 6 months before the discontinuance period lapses.

(c) *General considerations.*

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- (1) In addition to the findings required by subsection (d) of this section, the Board must consider and be guided by:
 - (i) the condition, use, operation, occupancy, and maintenance of all dwelling units within the structure;
 - (ii) the existing amount of floor area per individual for the occupants in each dwelling unit;
 - (iii) the physical arrangement of the dwelling units within the structure; and
 - (iv) all other matters considered to be in the interest of the general welfare.
- (2) Any relief granted by the Board:
 - (i) may only be as reasonably required to effect substantial justice;
 - (ii) may not be granted on an arbitrary or discriminatory basis; and
 - (iii) must be granted with due consideration for its effect on the value, utilization, enjoyment, and ultimate development of neighboring properties.

(d) *Required findings.*

The Board must find that:

- (1) the noncomplying dwelling unit has not in fact been abandoned;
- (2) the continuance will not increase the danger of fire or otherwise endanger the public safety;
- (3) the continuance will not overcrowd the lot or structure or create an undue concentration of population;
- (4) the noncomplying structure meets all requirements and standards of the City's Housing, Fire Prevention, Health, and Building Codes, and of all other applicable laws and regulations of the City.

(e) *Imposition of conditions.*

(1) *Board may impose.*

To the extent necessary or desirable to secure the health, safety, and welfare of the occupants and to reduce or minimize any effect on other properties in the neighborhood, the Board may:

- (i) require changes or modifications in any design or plan of any existing noncomplying structure or any alteration of the structure; and
- (ii) impose conditions, restrictions, and limitations on the continuance.

(2) *Compliance required.*

- (i) Failure to comply with any change, condition, restriction, or limitation imposed by the Board under this section constitutes a violation of this article.
- (ii) No condition, restriction, or limitation imposed by the Board under this section may be changed unless, on the filing of a new application to the Board, the Board authorizes the change.